1 2 3	Paul J. Garrick, OSB #82475 Staff Attorney FRED LONG, TRUSTEE P.O. Box 467 Eugene, OR 97440-0467 Telephone: (541) 343-1556
5	Chapter 13 Trustee
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8	UNITED STATES BANKRUPTCY COURT
9	FOR THE DISTRICT OF OREGON
10	In re) Case No. 11-60112-fra13
11	CLARENCE J. SWING and) TRUSTEE'S OBJECTION TO CONFIRMATION; AND MOTION TO DISMISS
12 13	Debtors.) MOTION TO DISMISS
14	FRED LONG, Trustee, objects to confirmation of the debtor's chapter 13 plan dated
15	January 12, 2011 (Docket No. 2). The reasons for objection are:
16	1. Status. The undersigned recently received a phone call from the debtors' son, asking
17	whether the debtors need to file a modified plan in light of Northwest Community Credit Union's
18	withdrawal of objection to confirmation (Docket No. 49; 6/22/11). I explained that I could not
19	give legal advice to the debtors (or their son). The trustee has not previously filed an objection
20	to confirmation because he assumed that the debtors would file a modified plan. Since that
21	assumption may now be in doubt, the trustee files this objection to make clear why, in his view,
22	the present plan cannot be confirmed.
23	2. Feasibility. A chapter 13 plan must be completed within five years. 11 U.S.C. §
24	1322(d). According to the proof of claim filed by Homecomings Financial (Claim No. 6;
25	6/1/11), the arrearage is \$37,810. Paragraph 2(b)(1) of the plan estimates the arrearage at
26	\$12,913. The plan is not feasible if the creditor is correct. The current plan includes a \$40,000
7	"hest interest number " see PA below, which makes the feasibility problem even worse

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- 3. Paragraph 1(a) of the plan states that the debtors will pay \$392 per month to the trustee. Per paragraph 2(b)(1), the payments to the secured creditors also total \$392 per month. This will not work. The trustee's compensation is paid from the plan payments (plan, P.2(a)). The debtors must pay approximately \$425 per month to the trustee, in order that there will be \$392 available to pay out to creditors.
- 4. <u>"Best interest of creditors test."</u> Paragraph 2(g) of the plan states that the "best interest of creditors" number is \$40,000, which means that <u>unsecured</u> creditors must receive at least that amount (or be paid in full, whichever is less) under the plan. The debtors must file a modified plan, if they believe that it is appropriate to reduce the "best interest number."
- 5. Paragraph 4: current mortgage payments. Paragraph 4 of the plan requires the debtors to make their regular, postpetition mortgage payments. The creditor's motion for relief from stay (Docket No. 18; 3/31/11) asserts that postpetition payments are not current. The debtors' response (Docket No. 30; 4/21/11) asserts that the creditor does not have a lien on the property, and lacks standing to file a motion for relief from stay. The plan cannot be confirmed until this dispute is resolved.
- 6. Northwest Community Credit Union. The credit union withdrew its objection to confirmation because it "is no longer a creditor of [debtors] and does not need to be included in the Chapter 13 Plan." According to its objection to confirmation, the credit union was owed \$4,565 on the date this case was filed. The trustee requests that the debtors provide a written explanation as to why the credit union is no longer a creditor. If the debt was paid postpetition, the trustee requests documentation regarding the source of funds used to pay the debt.
 - 7. Motion to Dismiss. The trustee moves the court for an order dismissing this case.

FRED LONG, TRUSTEE

By: /s/ Paul J. Garrick
Paul J. Garrick, OSB #82475
Staff Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2011, I served a copy of the foregoing TRUSTEE'S OBJECTION TO CONFIRMATION; AND MOTION TO DISMISS by mailing a copy of this document by United States first class mail, postage prepaid, and addressed to the following:

Clarence J. Swing and Laura Swing 17479 Hwy 62 Eagle Point, OR 97524

FRED LONG, TRUSTEE

By: /s/ Paul J. Garrick
Paul J Garrick, OSB #82475
Staff Attorney